

**CRIMINAL LAW POLICY COMMITTEE  
INDIANA JUDICIAL CONFERENCE**

**PROPOSED MINUTES  
Conference Call January 30, 2015**

The Criminal Law Policy Committee of the Indiana Judicial Conference convened by conference call on January 30, 2015, at 11:30 a.m. Eastern Standard Time.

1. **Members participating.** Mark Spitzer, Chair, Denny Bridges, Tom Clem, Paul Felix, Kim Hall, Mark Massa, and Dean Sobecki participated in the call.
2. **Staff participating.** Mike McMahon provided the Committee with staff assistance.
3. **Minutes of October 27, 2014 conference call.** Members approved the proposed minute of the Committee's October 27, 2014 conference call.
4. **2015 House Bill 1551.** The Committee reviewed HB 1551, which would expand DNA criminal justice testing by mandating that a buccal swab be taken from any person arrested for any felony. Current law requires samples only from persons who are convicted and sentenced for crimes against the person or for burglary. The bill also would raise the DNA processing fee, charged to all persons convicted of a crime, an infraction, or an ordinance violation, from \$2 to \$4, to help defray the expense of the expanded testing. And for arrested persons from whom DNA samples are taken and who were not charged, or if charged had the charges dismissed or were acquitted, the bill provides for a DNA expungement remedy 30 days after the arrest, dismissal, or acquittal. The bill also provides that, if DNA indicates more offenses had been committed by the arrested person, that fact may be used in considering whether bail should be increased or revoked.  
Chief Justice Rush had asked that the bill be forwarded to the Committee for scrutiny.  
In Committee discussion, it was noted that the DNA sampling for all felony arrests might cause pretextual arrests in order to obtain the DNA identification required to charge the offenses police suspect the subject may have committed. It was noted that the U. S. Supreme Court has held that taking a buccal swab for DNA is akin to taking fingerprints and does not violate the Fourth Amendment. [The decision is *Maryland v. King*, No. 12-207, \_\_\_ U.S \_\_\_, 133 S. Ct. 1958; 186 L. Ed. 2d 1 (2013) (“[w]hen officers make an arrest supported by probable cause to hold for a serious offense and they bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment”).] Members observed that, notwithstanding the Fourth Amendment holding, the DNA reveals a good deal more than just identity, and in that way is distinguishable from taking fingerprints. Members noted the “mechanical” issues the legislation does not address about the expungement remedy - whether a civil filing fee is intended, whether the expungement should be under the same cause number used for the arrest or the charges, if any were filed, contents of the petition - the same sorts of issues not addressed in the initial version of the conviction expungement remedy adopted two years ago. It was suggested that the bill's 30 day waiting period before the expungement petition could be filed was too short. Another observation was that the bill puts the onus on the arrested person to affirmatively act to obtain relief; it would be more fair to require that the expungement process be triggered without any action by the arrested person when no charges were file, or charges were dismissed, or the arrested person was acquitted. It was also pointed out that DNA samples can be obtained from arrested persons now by use of the warrant procedure, so that samples can be obtained without HB 1551's mandate of a sample from every person arrested for a felony. Chairman Spitzer suggested, and the other members agreed, that Mike McMahon would draft a memo to the Chief Justice reciting the Committee's reservations about the bill's silence on procedural details about the expungement remedy. The draft is to be circulated among the members before being put in final form for the Chief Justice.

5. **Transferring seized assets to federal forfeiture program.** Members discussed the draft amendments to the statute on transfer of seized property to federal officials for federal forfeiture. The recent cancellation by Attorney General Holder of the federal “Equitable Sharing” program, in response to congressional and other critics of the federal asset forfeiture procedure’s use by state and local law enforcement, was discussed. This cancellation may significantly reduce Indiana transfers of property to federal authorities. Judge Clem pointed out that the next administration might reverse AG Holder’s cancellation, so that it would be prudent to proceed with the legislative changes the Committee has drafted to provide more procedural protections for person whose property has been seized. It was noted that Senator Brandt Hershman has filed HB 388 to provide more protections for property owners in Indiana forfeiture actions, so that he might be receptive to authoring legislation next year which would contain the Committee’s proposed amendment to IC 35-33-5-5.
6. **Other 2015 legislation.** Committee members reviewed a list of 2015 criminal law General Assembly bills. A number of bills making undesirable changes to bail statutes have been filed but not yet heard, it was noted. The Committee agreed it would be best to wait to see whether any of these bills will receive a hearing before any steps to affirmatively oppose them are to be taken. Mike McMahon was asked to find out more about SB 238, which would allow money in the county supplemental adult probation services fund or the local supplemental adult probation services fund to be used to pay part or all of the salaries of probation officers, rather than just for supplementing services and salaries as now provided. McMahon is to report what he finds to members. SB 547 on veterans courts would mandate that the Judicial Center establish a veterans court in every county. Judges Spitzer and Sobecki, who have such courts, observed that a number of counties do not have the infrastructure required for veterans court (for example, there are only three or four VA outreach officers for the entire state). It was noted that SB 174, which would make the 2014 liberalized sentence modification procedure applicable to crimes committed before July 1, 2014, may significantly increase the volume of sentence modification petitions.
7. **Next conference call.** Members agreed that another legislation conference call should be scheduled, after the date when bills must be passed out of the house of origin, probably at the end of February. Judge Spitzer will pick a date after consulting with Mike McMahon.
8. **Adjournment.** The conference call adjourned at about 12:30 p.m.

Respectfully submitted,

Mike McMahon  
Staff Counsel